**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN,
JAIPUR BENCH, JAIPUR.**

S. B. CIVIL MISC. APPEAL NO. 2567/2004

**THE ALL SAINTS CHURCH SOCIETY & ANR.
v
STATE OF RAJASTHAN & OTHERS**

DATE OF JUDGMENT: 4th MAY, 2007.

Hon'ble Mr. Justice R. S. Chauhan

**Mr. Rajesh Kapoor for the appellants.
Mr. M.S. Beg, for the respondents.**

By Court:

This appeal arises out of order dated 2.11.2004 passed by the Addl. District Judge No.6, Jaipur City, Jaipur whereby the learned Judge has allowed the temporary injunction application filed by the respondents and has prohibited the appellants from engaging the service of any other ordained priest except the one appointed by the respondents.

In a nutshell the facts of the case are reminiscent of the Reformation in 16th Century Europe: the contest in this case is between the Church of North India (henceforth to be referred to as 'the CNI' or 'the Mother Church', for short), a body controlling the Roman Catholic Churches in North India and the appellant society, 'The All Saints Church Society'. The CNI is represented by

respondent No. 1, the Diocese of Rajasthan. According to respondent No. 1—the original plaintiff in the suit—in 1875, the Maharaja of Jaipur had allotted seventeen Bighs of land and had donated Rs. 3000/- for the construction of a church in Jaipur. Even subsequently, the Maharaja donated money to the Church. On 25-12-1876, a Church was consecrated by the Rev. Bishop Dr. E. R. Johnson, Bishop of Calcutta and was named as " All Saints Church". The said church is included in the definition of Church as contained in the Indian Church Act, 1927. From 1981, the said church is under the Diocese of Rajasthan. Further, the CNI Association is registered under the Company Act, 1956 and has its registered Headquarters at New Delhi. The CNI has its own Constitution. The Constitution of CNI governs all the Roman Catholic Churches of North India, and their movable and immovable assets. According to the Constitution, different Dioceses are created all over India. Rev. Bishop heads each Diocese. The Diocese of Rajasthan—respondent No. 1--controls all the Roman Catholic Churches in Rajasthan. The Rev. Bishop in consultation with the Diocese Council appoints the priests and other staff members. The Diocese pays the priest and the other staff members. Diocese of Rajasthan is further empowered to appoint the Presbyter-in-Charge. In case the priest or the Presbyter-in-charge misconduct themselves, the Diocese can remove them. The Diocese of

Rajasthan has its headquarters at Ajmer. The All Saints Church falls within the Diocese of Rajasthan. On 1-2-2003, the Diocese appointed Rev. Kuss Loyal as Assistant Priest for the All Saints Church. He took over the office on 9-2-2003. However, with his appointment, the Secretary of All Saints Church Society, the appellants before us, were unhappy. Therefore, they filed a civil suit before the Additional Civil Judge (Junior Division) No. 2, Jaipur. However, the learned civil court did not grant any temporary injunction in favor of the appellants. According to the plaint, the appellants have also started interfering with the functioning of the church. Therefore, the Diocese appointed Rev. Z. R. Messiah as the Presbyter-in-Charge of the All Saints Church. Furthermore, the appellants secretively created a Society, called the All Saints Church Society and are trying to illegally take over the property belonging to the All Saints Church, which actually belongs to the Diocese. Therefore, the respondents filed a civil suit for declaration and permanent injunction against the appellants. Along with the suit, the respondents also filed an application for temporary injunction under Order 31, Rules 1 and 2 of the Civil Procedure Code ('the Code', for short).

On the other hand, the appellants filed their written statement and claimed that the members of the society were earlier members of the Roman Catholic Church under the Diocese of Rajasthan.

However, as the members were disturbed by the functioning of the CNI in general and of the Diocese, in particular, on 26th of November 1989 they broke away from the Mother Church and formed a society called 'The All Saints Church Society'. Subsequently, on 27-12-1989, the said society was registered under the Societies Act. The society's Registration number is, Registration Certificate No. 357/Jaipur, 1989. The society also has its own Constitution, Rules and Regulations. The object and purpose of the society is "to follow all through its Governing Body (also known as Pastorate Committee), by word and deed the gospel of Jesus Christ for the salvation of good of all humankind through worship and all other activities of the Church, which may include educational, medical, social, agricultural and other services which promote spiritual growth, self-reliance and social justice, irrespective of caste, creed or colour. There shall be no profit motive involved in attainment of the above objects." The members of the society were to constitute a Governing Body. The society was also to have certain officers such as the Chairman, the Vice-Chairman, the Secretary, and the Treasurer. According to the Constitution, the property of the society included moveable and immoveable property of the All Saints Church such as Church building situated near the old residency. The Priest who would carry out the service in the Church had to be Ordained Priest. Further it is the appellant's case that having formed

the society and having registered itself, the members broken away from the Mother Church. Therefore, they were no longer controlled or regulated by the Constitution of the CNI. As a separate congregation, the appellant claimed a right to appoint Priest in their own Church. However, the respondent No.1, the Diocese, on the other hand, claimed that it had the right to appoint an Ordained Priest in the All Saints Church situated in Jaipur. Obviously, both the parties were claiming the right to appoint an Ordained Priest to the same Church and over the congregation of the society. According to the appellants, by appointing a Priest the respondent No.1 was trying to take over the control and possession of the property belonging to the society and was trying to eliminate the break away society.

After hearing both the parties vide order dated 2.11.04 the learned Judge allowed the application for temporary injunction as aforementioned. Hence, this appeal before this Court.

Since the case involved the existence and the smooth functioning of a faith, since it involved the sanctity and the harmony or the Roman Catholic Church functioning in the State of Rajasthan, this Court deemed it proper to see if a reconciliation could be achieved between the Mother Church and the break away society. Therefore, vide order dated 4.8.06, this Court directed both the

parties to appear before this court on 23.8.06. The moot issue before this court as well as before the learned trial court was with regard to the power to appoint a Priest in the All Saints Church at Jaipur. While the appellants were insisting that they had the power to appoint the Priest, the respondent No.1 was contesting that the said power lies with the diocese of Rajasthan. The appellants were insisting that Rev. J.C. Joseph be appointed as the Presbyter In-Charge, while the Diocese was insisting that the Presbyter-in Charge and the Priest appointed by them should continue to function without any hindrance from the appellants. For over two months reconciliation proceedings were held in the Chamber, as the Court felt that the conflict within the Church should be contained and resolved mutually between the parties. Since the dispute is likely to adversely affect the image of the Mother Church, the Court strongly felt that any dispute between the Mother Church and the appellant should be resolved harmoniously. However, despite the best efforts of the court, the parties have failed to resolve the ticklish issue about the appointment of the Priest.

Mr. Rajesh Kapoor, the learned counsel for the appellant has contended that under Article 19 read with Articles 21, 25 and 26 of the Constitution of India, the appellants have a right to constitute themselves into an assembly, into a Church and to profess, practice

and propagate their religion. They also have the right to establish and maintain institutions for religious and charitable, purpose to manage its own affairs in the matter of religion, to own and acquire movable and immoveable property and to administer such property in accordance with law. Dissatisfied with the functioning of the Mother Church in 1989, members of diocese had broken away from the Mother Church and had formed a separate Church on their own which was duly registered under the Societies Act. Therefore, the society has independent existence of its own. It is no longer within the umbrella of the Mother Church. As a separate and individual entity, the congregation has the right to choose and appoint their own Priest, the power to appoint the Priest vests within the Governing Body. Since the society has severed its relations from the Mother Church, the respondent No.1 cannot impose the constitution of the CNI upon the Society. Since the diocese is trying to impose a Priest appointed by it, it is meddling in the affairs of the society. Therefore, the learned Judge was not justified in permitting the respondents to impose their Presbyter-in-Charge and their priest on the appellants. Further, the appellants have challenged the impugned order on the ground that the issue before the learned trial court was not with regard to the property of the All Saints Church, but was with regard to the power to appoint the Priest. However, the learned trial court has misdirected itself and has gone into an

elaborate discussion about the right of the diocese to hold the property belonging to the appellant. Therefore, the impugned order is unsustainable.

On the other hand, Mr. Beg, the learned counsel for respondents, has vehemently argued that all the Catholic Churches functioning in North India automatically belong to the CNI. Therefore, the members of the diocese do not have the right, fundamental or otherwise, to break away from the Mother Church and to form a separate Church on their own. Hence, even if a society has been formed and has been registered, it would continue to function under the constitution of CNI. Thus, the diocese has a right to appoint the Presbyter-in-charge and the priest of its choice over the congregation of the All Saints Church.

We have heard both the learned counsels and have perused the impugned order.

A bare perusal of the impugned order clearly reveals that the learned Judge has failed to decide the basic issue that was raised in the temporary application before the Court. As stated above, the issue was not with regard to the property or the control of the

property. The issue before the learned trial court was with regard to the power to appoint a Priest. However, the learned Judge has allowed the application for temporary injunction on the ground that the property belongs to respondents. Therefore, the respondent No.1 has the right to appoint the Priest and to control, supervise and maintain the All Saints Church situated in Jaipur. We are afraid that the reasoning given by the learned Judge is unsustainable.

We, the people of India have solemnly resolved to constitute India into a sovereign socialist secular democratic republic and to secure, liberty of thought, expression, belief, faith and worship in this country. Articles 19(1)(b) and Article 19(1)(a) of the Constitution of India guarantee the right to assemble peaceably, and the freedom of speech and expression respectively. Article 21 of the Constitution of India further guarantees the fundamental right "life and personal liberty". Both life and personal liberty would include the right to profess, practice and propagate one's religious beliefs. In fact, Articles 25 and 26 are but facet of Article 21 of the constitution of India. Article 25 of the Constitution of India guarantees the right to profess, practice and propagation and the religion of once choice. Article 26 of the Constitution of India equally bestows the fundamental right on every religious denomination and every section thereof to establish and maintain institution for religious purposes, to manage its own affairs in matters of religion to own and acquire

moveable and immoveable property and to administer such property in accordance with law. Thus, although earlier members of the diocese, the members of the society have the fundamental rights to break away from the Mother Church and to constitute themselves into a separate Church or Society. Therefore, they have the fundamental right to cut the umbilical chord from the mother Church.

Once having broken away from the Mother Church, having registered themselves as a society, the members have acquired an independent existence from the CNI. Therefore, the contention of the learned counsel for respondents that even if members were to break away from the Mother Church, they would be governed by the CNI constitution is without force. For, once having broken away from the Mother Church, the constitution, the rules and regulations of the Mother Church are inapplicable to the society. Therefore, the contention raised by Mr. Beg is unacceptable.

In case the contention of the learned counsel for respondents were to be accepted, such a stand would be in violation of Articles 19, 21, 25 and 26 of the Constitution of India. For, the respondents cannot claim that they have a right to prevent a citizen or a group of

citizens from break away from Mother Church and from founding a separate Church of their own. This argument on behalf of the respondents may have worked in the 16th Century Europe, but cannot possibly be accepted in the 21st Century and that too in a democratic country. This argument is reminiscent of the argument placed by the Papacy when it denied the right to break away from the Catholic Church to King Henry VIII of England and to Martin Luther in Germany. But the denial of such a right and its consequences are well known to history. Therefore, the position taken by the respondents is totally unacceptable to the Constitution of India. Hence, it is unsustainable.

Once the society has broken away from the Mother Church, the members of the society have a fundamental right to run their Church in the manner deemed proper and in accordance with law. Therefore, the appellants have the fundamental right to appoint a Priest of their own choice. This fundamental right arises out of Article 26 of the Constitution of India. More so it is in the logic of things as a congregation cannot be subjected to a Priest, who is not of its liking. After all, the duty of the Priest is to administer the sacraments in accordance with practice and norms of the Church; the duty of the Priest is to guide the members of the congregation; the duty of the Priest is to propagate the faith of the Church amongst the people. But these duties cannot be performed if there is a

constant conflict between the Priest and the congregation. In Christian literature a Priest has always been symbolized as a Shepherd and the congregation, a flock of sheep. Therefore, for the smooth functioning of the Church, it is essential that there be harmony between the Shepherd and the flock. In case the Priest is imposed upon a congregation, the smooth functioning of the Church would be difficult to maintain. The constant tussle and the abrasion between the congregation and the Priest are bound to erode the faith of the people in the Church as an institution. Therefore, the appellants have the right--in fact a fundamental right, to have a Priest of their own choice.

Even in the post-modern world, religion has a vital function to play in maintaining peace and harmony in the society. The Church, thus, plays an important role in the lives of the people as individuals and in the life of the society and in the life of the Nation. Therefore, the judiciary should try to protect and promote the harmonious functioning of the Church or in that matter of every religion or faith practiced in this country. Moreover, while deciding applications in civil suit, the court cannot be oblivious of the Constitutional mandate. After all, the Constitution of India is the touchstone on which every law of the land, every action of the state, and every position of the parties before the court has to be tested.

Considering the fact that the appellants have fundamental right to appoint a Priest of their own choice, they have a very strong prima facie case in their favour. Since the civil proceedings will take a very long time before being completed, the balance of convenience is also on the side of the appellants. Moreover, in case a Priest is imposed upon the appellants, as stated above, the functioning of its Church may be adversely effected. Such a mal-functioning would certainly lead to irreparable loss, which cannot be compensated in any manner. Considering the existence of these three elements in favour of the appellants, the learned trial court should have rejected the temporary injunction application.

In the result, this appeal is allowed. The order dated 2.11.2004 is quashed and set aside. The respondents are directed not to appoint any Priest during the pendency of the civil suit and the appellants are at liberty to appoint a Priest of their own choice during the said period.

However, as a footnote we would like to add that although the conciliation proceedings have failed before this court between the appellant and the respondents, but we still hope and pray that the crystal waters of the Jordan River are not muddied by the myopic visions of the parties. The image of the Christianity, which it has

maintained for over 2000 years, should be kept pristine and unsullied. Both the parties should realize the responsibilities that have been given to them by the Lord and by the Church. It is, therefore, hoped that both the parties would reconcile their differences in a reasonable fashion. Since the dispute should be settled as early as possible, the learned Trial Court is directed to decide the case within a year of the date of the receipt of the certified copy of this order.

R. S. CHAUHAN, J.

MRG.